



Neutral citation number: [2024] EWHC 773 (Comm)

Case No: LM-2022-000232

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**LONDON CIRCUIT COMMERCIAL COURT (KBD)**

Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 08/04/2024

**Before :**

**His Honour Judge Pearce**

-----  
**Between :**

- (1) **LOWRY TRADING LIMITED**  
(2) **SAS FINANCING LIMITED**

**Claimants**

**- and -**

- (1) **MUSICALIZE LTD**  
(2) **BENJAMIN DELANO ANDERSON**  
(3) **SOPHIE KATE ANDERSON**  
(4) **MUSICALIZE TOURING LIMITED**  
(5) **MUSICALIZE TOURING EVENTS  
LIMITED (in administration)**

**Defendants**

-----  
**Jonathan Cohen KC and Stuart Sanders (instructed by ARMA Litigation) for the  
Claimants**

**Daria Gleyze (instructed by Devonshires Solicitors LLP) for the Defendants**

Hearing date: 20 March 2024  
-----

**Approved Judgment**

This judgment was handed down remotely at 10.00 am on 8 April 2024 by circulation to the parties or their representatives by e-mail.

.....

## His Honour Judge Pearce:

### INTRODUCTION

1. On 29 January 2024, I gave summary judgment for the Claimants on a significant part of this claim. I dealt with certain consequential matters at a hearing on 15 March 2024.
2. One of the consequential matters that raised at the hearing in March 2024 was the Claimants' application for disclosure and/or an order in respect of the provision of further information dated 11 September 2023. The Claimants argued that the Defendants had no defence to the order being sought and that I should either make the order forthwith or allow a limited time for the Defendants to lodge submissions with a determination of the application on appeal. The latter appeared the appropriate way to deal with the application and I made an order that any further submissions on the issue be lodged by 4pm on 2 April 2024, with a view to my determining the issue on paper on 3 April 2024.
3. This my judgment pursuant to that timetable.

### THE BACKGROUND

4. The background to the Claimants' claims can be seen from paragraphs 4 to 8 of my judgment of 29 January 2024.
5. During the claim, the Claimants have obtained freezing orders as follows:
  - 5.1. For the First Claimant (Lowry):

- 5.1.1. On 21 October 2021, a without notice freezing order from HHJ Pelling KC, Including an order permitting the use of assets in the ordinary and proper course of business as follows:

*“11(2) This order does not prohibit Musicalize Ltd from dealing with or disposing of any of its, her or his assets in the ordinary and proper course of business, but before doing so the Respondent must tell the Applicant’s legal representatives.”*

- 5.1.2. That freezing injunction was later extended, on the same term as to the use of assets in the ordinary and proper course of the business of Musicalize Ltd ,on 4 November 2022 and then on 10 November 2022, in each case by orders of Simon Birt KC sitting as a Deputy High Court Judge

- 5.2. For the Second Claimant (SAS), on 16 November 2022, a without notice freezing order from HHJ Pelling KC, including an order permitting the use of assets in the ordinary and proper course of business as follows:

*“12(2) The prohibition in paragraphs 7 and 8 of this order do not prohibit Musicalize Touring Ltd and Musicalize Touring Events Ltd from dealing with or disposing of any of its, her or his assets (other than the Funds) in the ordinary and proper*

*course of business, but before doing so the Respondent must tell the Applicant's legal representatives."*

6. The Claimants contend that the Defendants have not complied with these orders. They seek an order in the following terms:

*"The Defendants do comply with paragraph 11 (2) & 12 (2) of the Pelling KC's (sic) Order dated 24 October 2022 and 16 November 2022 respectively by notifying the Applicants legal representatives how the Defendants' assets have been used in the ordinary course of business, such information to be provided by way of witness statement endorsed with a statement of truth.*

*and/or*

*2. The Defendants provide by way of specific disclosure any and all bank statements and any other documents in their possession verifying where income generated from any dealings of their assets frozen and preserved by Pelling KC Orders (sic) of 24 October 2022 and 16 November 2022 have been paid.*

*and/or*

*3. The Defendants do answer the Claimants' Part 18 Request dated 11 September 2023.*

*4. The Defendants pay the costs borne (sic) and incidental to this Application."*

7. The Claimants' Part 18 request, made by letter dated 11 September 2023, is in the following terms:

*"1.1 Our clients are entitled to understand what steps your clients are taking to comply with the various freezing and proprietary orders granted against them.*

*1.2 Pursuant to paragraphs 11(2) and 12 (2) of the orders granted by HHJ Pelling KC dated 20 October 2022 ("Freezing Order") and 16 November 2022 ("Proprietary Order"), your clients are required to notify us first before they deal with their assets such dealing only being permitted if it is in the ordinary course of business. The Defendants' assets include the boxes that the Defendants use and generate revenue from which are at the O2 and Wembley Arenas (the "Boxes").*

*1.3 Please confirm and clarify:*

*1.3.1 Who is receiving the income generated from the Boxes at the O2 and Wembley since the granting of the Freezing Order?*

*1.3.2 How much income has been generated from the Boxes since the granting of the Freezing Order? Where is that money being held?*

*1.3.3 Who is making the quarterly payments for the Boxes?*

*1.3.4 When was the last time payment has been made for the Boxes?*

*1.3.5 Have your clients opened new bank accounts or do they have the use of accounts not in their names? If the answer is yes, please provide details of those accounts and copies of bank statements in the period from 20 October 2022 to-date.*

*1.3.6 What are the balances in the accounts held by your clients' in their personal names?"*

## **THE CLAIMANTS' APPLICATION**

8. The Claimants rely on a witness statement from their solicitor, Rajat Kant Sharma, dated 11 September 2023.
9. That witness statement sets out the following relevant history to the application:
  - 9.1. The Claimants became aware via social media that the Defendant companies generated revenue by the leasing of private hospitality boxes held at the O2 Arena and Wembley Stadium ("the Boxes").
  - 9.2. The disclosure provided by the Defendants pursuant to the Injunction Orders revealed that income generated from the Boxes was being received by the corporate Defendants.
  - 9.3. The receipt of income by the First and Fourth Defendants from the box at Wembley Stadium was corroborated by their solicitors in an email of 10 November 2022. The Solicitors also stated that the box at Wembley was originally in the name of the Fourth Defendant but that the contract with Wembley was renewed in the name of the First Defendant. They stated that there is an informal agreement between the First and Fifth Defendant that the latter take on the liability of paying the quarterly fee for the Wembley box in return for the profits from renting the box.
  - 9.4. Following disclosure provided by the Defendants pursuant to the freezing orders, it appeared that income from the Boxes was unaccounted for.
  - 9.5. On 18 May 2023, solicitors for the Claimant wrote to the Defendant's solicitors requesting, in respect of both boxes, details of:
    - 9.5.1. Who was responsible for making the quarterly payments for the boxes;
    - 9.5.2. Who was in receipt of the income from the boxes;

- 9.5.3. The amount of the income for each box since the granting of Lowry's freezing injunction dated 21 October 2022;
- 9.5.4. Proof of the income generated for each box;
- 9.5.5. How the Defendants were personally funding themselves in these current circumstances taking into consideration that the Fourth Defendant was in administration and the First Defendant was accepted as not trading; and
- 9.5.6. What the current bank account balances of the Second and Third Defendants were, and whether they had changed since the Order was granted.
- 9.6. The solicitors for the Defendant proposed to provide the disclosure by 4pm on Friday 2 June, if not sooner. However. On 2 June 2023, the Defendant's solicitors wrote to the Claimant stating that the responsible fee earner was not at work on account of ill health and therefore no response could be provided by the deadline.
- 9.7. Since then the Defendants have not provide the information sought.
10. The Claimants contend that the Defendants have plainly failed to deal with the assets namely their right to use the boxes, yet have not disclosed this, thereby being in breach of the orders. They fear that the Second and Third Defendants have simply diverted the proceeds from the boxes to other bank accounts, the identity of which is unknown.
11. In order to meet any argument that the dealings with the boxes are not in fact matters of which notification is required under the terms of the orders, the Claimants seek specific disclosure of the relevant bank statement relating to income from the boxes. This will demonstrate whether, as the Claimants fear, there have been breaches of the freezing orders.
12. The Claimants seek that order either as a specific disclosure order under CPR31.5 and/or as an order requiring the provision of further information under CPR 18.

### **THE DEFENDANT'S CASE**

13. On 2 April 2023, the Second Defendant emailed the court in the following terms (edited to remove reference to matters that are not relevant to the current issue but may arguably be confidential):

*"All,*

*Further to my brief conversation with [a member of Court staff] this afternoon, we are writing this email to the court firstly to apologise and secondly to explain our current position as to why we are unable to meet today's 4pm deadline to submit information to HHJ Pearce relating to an outstanding disclosure application in the LM-2022-000232 Lowry Trading Ltd v. Musicalize Ltd and others case.*

*We are currently without legal representation ...*

*We want to have it on record that this is in no way an attempt to avoid submitting the information and we have been compiling all of the information + supporting documentation as we believe it to be as well as writing our own witness statements but without speaking with our solicitors we are unsure what information has already been sent to the claimants solicitors as some of these requests go back as far as last year and we know that despite our premature daughter being in hospital at the time we were actively providing information to Devonshires.*

*We understand that court time is precious and that HHJ Pearce set time aside to deal with this but we are unsure as to what the next steps should be so we would like to request an extension until we are able to work out our representation situation.*

*Regards,*

*Ben”*

14. The Claimants responded in the following terms:

*“1. We would respectfully ask the Court to note that it is not the Claimants’ intention to file any further written submissions as the grounds for their application are set out in detail within the accompanying evidence, specifically the witness evidence of Rajat Sharma, filed on 11 September 2023. The Claimants really do not have much more to say other than it is their view that the Defendants have not complied with the orders made by HHJ Pelling and therefore immediate compliance and any orders for subsequent disclosure or provision of information must take place.*

*2. Considering Mr Anderson’s response, it does not appear that the Defendants are opposing the application in view that he has confirmed he is “compiling all of the information + supporting documentation” sought by way of the application.*

*3. In any event, as explained to the Court at the hearing on 20 March, the Claimants do not see any legitimate grounds as to how the application could be opposed.*

*4. It is however accepted that the implications of the application may be serious as accepted by the Defendants’ own counsel.*

*5. It was for this reason HHJ Pearce was keen to ensure that the Defendants have an opportunity to respond to the application and set forward any argument that could be made. They have now had that opportunity.*

*6. As such, we respectfully ask that this correspondence chain be placed before HHJ Pearce such that he can make a determination on the application.*

*We thank the Court for its assistance at this time.”*

## **DISCUSSION**

15. This claim proceeds in the Business and Property Courts. As a result of paragraph 1.8 of Practice Direction 57AD, the provisions of CPR Part 31 do not (save for certain limited exceptions of no relevance here) apply to these proceedings. I do not see that an order for disclosure under CPR 31.5 could properly be made.
16. But PD57AD contains an alternative scheme for disclosure in the Business and Property Courts including, in part 6, wide powers to the court to order extended disclosure, that is to say the disclosure of documents in addition to or as an alternative to initial disclosure under the Practice Direction. Normally, the parties will be expected to have completed the Disclosure Review Document prior to making an order for extended disclosure, but I can see nothing in part 6 which prevents the court from making the disclosure order sought here, where because of the stage of the proceedings, initial disclosure has not taken place, the Disclosure Review Document has not been drafted and in any event it is arguable, for reasons touched upon in the hearing on 15 March 2024, that the further pursuit of this litigation by the Claimants is unlikely to be a viable or cost effective proposition.
17. In addition or as an alternative, the Claimants argue for disclosure pursuant to CPR 18.1 on the grounds that the destination of the monies and hence the bank statements are “further information” in respect of matters in dispute which clarification is required.
18. In my judgment, the court’s powers are wide enough to make the orders sought, in part as orders for disclosure under PD57AD, in part as orders for Further Information under CPR Part 18. The issues is whether the court ought to make such orders.
19. The Claimants have already obtained summary judgment against various of the Defendants, including the Second and Third Defendants who are the human agents by which the corporate Defendants act, on the basis that they have no real prospect of successfully defending cases in fraud. In those circumstances, the court is likely to have a low threshold for suspicion that the Defendants may, in other respects, be acting outside the rules and norms of society, including in terms of compliance with court orders. The material produced by the Claimants is prima facie evidence of assets within the control of the Defendants and which are the subject of the freezing orders referred to above, but in respect of which the Defendants may have breached the requirements of the freezing injunctions, either by dealing with them outside the ordinary course of business or by dealing with them outside the ordinary course of business but failing to comply with the obligation to notify the Claimants.
20. I note the circumstances in which the Defendants say that they have not been able to comply with the order to file submissions on this issue. I am sympathetic to their plight in so far as the lack of legal representation may leave them in a position in which they do not know what has already been provided and may be in some doubt

as to whether it may be argued that the orders sought are an excessive interference in particular with their privacy. But such concerns in this respect are outweighed by the Claimants' argument that there is no realistic answer to the orders sought, given the prima facie evidence of dealing with at the very least the box at Wembley Stadium. Apart from any issue of privacy, which can be dealt with by limiting the obligation of disclosure, and the mere burden of having to comply with an order of this kind (which is a price that the Defendants have to pay given my finding on the summary judgment application), the only realistic answer to this application that I have been able to identify is that the Defendants have already complied with it. They however do not assert this to be the case, merely expressing ignorance on the point.

21. Any order should be targeted against the second and third Defendants. Given that both were involved in the events that are described in the summary judgement, both should speak to the issues with which the court is now concerned by signing relevant statements of truth.
22. The Claimants satisfy me that a reasonable and proportionate disclosure order having regard to the criteria of paragraph 6.4 of PD57AD is appropriate to establish the circumstances of such dealings. The order will be in the following terms:
  - 22.1. The Defendants do, by 4pm on 19 April 2024, provide disclosure by way of the provision of all bank statements identifying when and where any income generated for the Defendants or any of them by the Boxes during the period 21 October 2022 to the date of disclosure was paid.
  - 22.2. The said disclosure shall be given by
    - (a) The Defendants serving a witness statement verified by a statement of truth signed by both the Second and Third Defendants which identifies the relevant bank statements that deal with the receipt of money relating to the Boxes, verifying that all known adverse documents have been disclosed;
    - (b) Copies of the bank statements being annexed to the witness statement.
  - 22.3. The bank statements annexed to disclosure certificate shall be copies of the original statements that are unaltered, save that the Defendants are at liberty to redact the details (but not the date or amount) of any payment the disclosure of which they contend would amount to a breach of confidentiality or privacy.
  - 22.4. In the event that the Defendants exercise their right to redact relevant bank statement(s):
    - (a) They shall file with the court copies of the unredacted statement(s) as confidential documents not to be seen by the Claimants without permission of the court;
    - (b) The Claimants shall be at liberty to invite me to view the unredacted statements in order to consider the basis upon which they have been



redacted. I would not do so without giving the Defendants the opportunity to make submissions on the issue.

22.5. The order shall not prevent the Defendants claiming privilege in respect of the production of any document.

23. As regards the Request for Further Information, no corresponding privacy issues arise because the only issue is as to how the business assets have been dealt with, a matter of direct relevance to compliance with the freezing injunctions. An order is justified in the following terms:

The Defendants do, by 4pm on 19 April 2024, provide the following Further Information pursuant to CPR Part 18 by answering the following questions in a statement (“the Response”) verified by a statement of truth signed by the Second and Third Defendants:

(a) Have the Defendants or any of them dealt with or disposed of their assets in the ordinary course of business between 21 October 2022 and the date of the Response? If so, in respect of each dealing or disposing:

- a. Which Defendant dealt with or disposed of the asset?
- b. What asset was dealt with or disposed of?
- c. When did they deal with or dispose of the assets?
- d. How was that dealing or disposing part of the ordinary course of business of the particular Defendant?

(b) In respect of the use of the Boxes from 21 October 2022 to the date of the Response:

- a. Who paid for such use?
- b. How much was paid?
- c. when was it paid?

24. The Defendants may be able to invoke the privilege against self incrimination in respect of the request for further information. The order will remind them of that right.

25. The orders will require compliance by 4pm on 19 April 2024. There will be liberty to apply to vary the order, such application to be on 3 days’ notice to the Claimants, to be dealt with on paper by myself in the first instance.

26. The Claimants seek their costs of the applicant. Whilst they may have a strong argument that the Defendants’ failure to comply with their requests was unreasonable such as to justify an order, the failure of the Defendants to respond to the application by 2 April 2024 has left me with insufficient information to judge the issue. In any even, the costs are likely to be relatively low given that the application has been dealt with on paper. For the moment I shall simply reserve costs.

